IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4010 of 2007

Shri Dhananjay Dnyanu Surve — Petitioner
Vs.
The Secretary,
Vyayam Mandal, Satara & ors. — Respondents

Mr.Shailendra Kanetkar h/f. Mr.P.S.Dani for petitioner.

Mr.P.B.Shah for Resp.nos.1 and 2.

Mr.S.K.Chinchalikar for Resp.no.3.

CORAM: B.H.MARLAPALLE, J.

December 7, 2007.

P.C.

1. Heard Mr.Kanetkar holding for Mr.Dani, the learned counsel for the petitioner who is aggrieved by the judgment and order of the School Tribunal rendered on 30/11/2006 thereby dismissing Appeal No.145 of 2000 filed by him.

2. The petitioner passed his M.A. Degree and also obtained the qualification of B.P.Ed. (Bachelor of Physical Education). The respondent no.1 Society appointed him as per the appointment order dated 5/6/1997 for the academic year 1997-98 against a post reserved for S.T. as no ST candidate was available

in the selection process undertaken pursuant to an advertisement issued. In the second academic year the management again issued an advertisement but could not find an ST candidate and, therefore, the petitioner was issued a fresh appointment order for the academic year 1998-99. When the third advertisement was issued in the year 1999, the post was shown reserved for O.B.C. and no suitable candidate was available and, therefore, the petitioner was given a fresh appointment order in the academic year 1999-2000. However, for the academic year 2000-2001 the petitioner was not continued or issued any fresh appointment order and, therefore, he approached the School Tribunal in Appeal No.145 of 2000 stating that he had attained the status of being permanent within the meaning of Section 5 of the MEPS Act, 1977 contending that the Junior college had only five teachers and, therefore, there could be only two posts reserved and not three and consequently the post he was appointed against was not a reserved post. Though the respondent - management had opposed the appeal by filing a written statement, the School Tribunal allowed the appeal by its judgment and order dated 24/3/2004 accepting his the contentions of the petitioner that under Section 5(2) of the MEPS Act he

had acquired the status of permanent teacher having worked for three academic years and the post against which the petitioner was appointed could not be a reserved post. The management challenged the said order of the School Tribunal in Writ Petition No.7484 of 2004 and the petition was allowed by restoring the appeal to the file of the School Tribunal and it was directed to be heard and decided de novo within a period of four months from the date the parties appear before the Tribunal i.e. 24/7/2006. It appears the learned counsel appearing for the teacher in Writ Petition No.7484 of 2004 had stated that there was a vacancy available and, therefore, the management was directed to give the 1st respondent - teacher employment in the mean while subject to the Education officer verifying that the vacancy did exist. On remand it appears the Deputy Director of Education also filed his reply at Exhibit 27 and submitted that the appointment of the petitioner in the academic years 1997-98, 1998-99 and 1999-2000 was purely for each academic year and it was against a reserved post either for ST or OBC. The School Tribunal considered the rival contentions as well as the documents placed on record by the respective parties and held that the appointment of the

petitioner was on purely temporary basis. He was never appointed on probation and such fixed appointment was against a post reserved for ST or OBC. The Tribunal, therefore, held that the non-appointment of the petitioner in the academic year 2000-01 could not be held to be an act of illegal termination of service and consequently the appeal came to be dismissed as per the judgment and order dated 30/11/2006.

3. The Deputy Education officer from the office of the Director of Education, Kolahpur Region has filed an affidavit-in-reply and has pointed out that out of the five posts of teachers in the 2nd respondent from the Junior College only two were for open category and one each for SC, VJNT and OBC. Mr.Kanetkar relied upon a three-Judge Bench decision in the case of State of U.P. & anr. Vs. Pawan Kumar Tiwari & ors. **[(2005) 2 SCC 10]** and submitted that out of the total of five posts there could not be reservation in excess of 50 per cent and when it comes to the fraction it ought to be held that under the respondent no.2 only two posts were reserved and other three were from the open category. He also submitted that the reservation shown in the

advertisements against which the petitioner was appointed were in fact not reservations and the posts were always available for the open category candidates and if that be so the petitioner ought to be treated a permanent teacher having completed service in three academic years. These contentions raised before the School Tribunal have been repelled while dismissing the appeal. It is also important to note in the Written Statement filed at Exhibit 44 the respondents had also pointed out that the petitioner was not qualified to be appointed as an Assistant Teacher in a junior college in asmuchsas he did not possess the M.A. Degree with second class (with 55 per cent marks and above) and he did not possess either a B.Ed. degree or D.Ed. diploma which is a recognised qualification. On this additional ground, as per the respondents, the petitioner was not in any case eligible to be appointed as an Assistant Teacher. The School Tribunal has not recorded any specific finding on this issue in the impugned judgment and order.

4. There is no dispute that the respondent - management had issued advertisements in each of the academic years 1997-98, 1998-99, 1999-2000 and

2000-2001 and in the first two academic years the post was shown as reserved for ST whereas in the remaining two years it was shown as reserved for OBC. The respondent no.2 is a Junior College and the qualifications for appointment of the Head, Supervisor and Assistant Teachers and experience are prescribed under the MEPS Rules, 1981. Mr. Kanetkar, the learned counsel for the petitioner has placed before me copies of the appointment orders issued to the petitioner in all the three academic years. The approval orders passed by the Deputy Director of Education and the relieving letters issued by the management at the end of each academic year. The appointment letters explicitly clarified that, (a) the appointment order was for a purely temporary period and for the relevant academic year, (b) the post for which the petitioner was appointed was a reserved post for ST / OBC, (c) the petitioner's appointment was being made on a specific understanding that it was only for the relevant academic year and he ought to be deemed to have been automatically terminated from service at the end of June in every academic year, (d) the appointment was subject to the approval of the Deputy Director of Education.

. The Deputy Director of Education in each of the approval orders has clearly stated that the post being reserved, approval was being granted as a special case only for a temporary period for which the appointment was made. By letters dated 30/4/1998, 31/5/1999 the petitioner clearly knew that his appointment being only for an academic year his tenure would come to an end as stated in the appointment order. Having regards to these letters of appointment and the approval orders passed by the Deputy Director of Education, it is clear that the petitioner was never appointed on probation. He was appointed on temporary basis as the reserved category candidate was not available and the approval orders passed by the Education Officer were only for such fixed periods and specifically on the basis that the post was reserved. Therefore, the petitioner cannot claim that he had attained the status of being a deemed permanent teacher under Section 5(2) of the MEPS Act.

5. Now coming to the issue of reservation, the same is between the management and the Education officer. Even if it is accepted that out of the

total five posts only two could be in the reserved category, that by itself does not give a vested right to the petitioner and the self-proclaimed immunity from being terminated from service. The petitioner was aware when he accepted the appointment order in each academic year that he was appointed against a reserved post, for a specific period and that he would stand relieved at the end of the academic year. He did not dispute the contents of the appointment order or the legality therein at any point of time till he filed the appeal.

6. Mr.Kanetkar submitted that there is a vacancy available and the petitioner should be absorbed against such a vacancy. This submission appears to be in tune with the observations made by this Court in the earlier order dated 7/7/2006 by which Writ Petition No.7484 of 2004 was allowed by restoring the appeal and remanding it for fresh hearing and disposal. However, as noted earlier, the issue of the petitioner's eligibility for such appointment is relevant and equally important issue. The affidavit-in-reply filed on behalf of the Deputy Director of Education clearly points out that the petitioner does not possess M.A. Degree with 55

percent marks. Admittedly he does not possess a further qualification of B.Ed. or D.Ed. Rule 6 of the MEPS Rules, 1981 states that the minimum qualifications for the post of teachers in Junior College of Education shall be as specified in Schedule "B". Part III deals with the qualifications for teachers in Junior Colleges and for the full-time teachers the qualifications prescribed are, (a) Master's Degree of a statutory University in second class in the respective subjects and (b) B.Ed., or a Diploma or Certificate in Teaching, approved by the Department. The petitioner admittedly does not possess the qualification of B.Ed. or D.Ed. The management in its written statement had also referred to the G.R. dated 3/4/2003 pointing out that the petitioner was not qualified to be appointed as Assistant teacher in a Training College of Education as he did not possess the requisite qualifications and this is one more aspect which comes in the way of the petitioner even for being considered for his appointment against any existing vacancy.

7. Finally Mr.Kanetkar contended that there is a post of Assistant Teacher in Physical Education for which the petitioner is qualified. Without going

into the eligibility of the petitioner, if such a post is available nothing stops him from applying if and when the management advertises for the same and obviously the management will consider the eligibility on all counts. He has the choice to compete with all others provided he is qualified.

8. In the premises, I am satisfied that the impugned order passed by the School Tribunal does not call for any interference under Article 227 of the Constitution as it cannot be termed as perverse or patently erroneous.

(B.H.MARL